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Attorneys for Defendants
MICHAEL P. McGRATH
and ALL RISKS, LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT

CRUMP INSURANCE SERVICES, INC.,

Plaintiff,

vs.

MICHAEL P. McGRATH, an individual,
ALL RISKS, LTD., a corporation, and
Does 1 through 50, inclusive,

Defendant.

Case No. C-07-4636 MMC

**AFFIDAVIT OF DENA L. NARBAITZ IN
SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT OR,
ALTERNATIVELY, SUMMARY
ADJUDICATION**

Date: October 10, 2008
Time: 9:00 a.m.
Judge: Honorable Maxine M. Chesney
CTRM: 7

I, Dena L. Narbaitz, declare:

1. I am an attorney at law duly licensed to practice law before all courts of the State of California. I am Of Counsel in the law offices of Curiale Dellaverson Hirschfeld & Kraemer, LLP, attorneys of record for Defendants All Risks, Ltd. ("All Risks") and Michael McGrath. I make this Affidavit in support of Defendants All Risks and Michael McGrath's Motion for Summary Judgment or, alternatively, Summary Adjudication.

2. Attached hereto as Exhibit A are true and correct copies of transcript pages from the Deposition of Glenn Hargrove.

3. Attached hereto as Exhibit B are true and correct copies of transcript pages from

1 the Deposition of John Jennings.

2 4. Attached hereto as Exhibit C are true and correct copies of transcript pages from
3 the Deposition of Rick McDonough.

4 5. Attached hereto as Exhibit D are true and correct copies of transcript pages from
5 the Deposition of Peter Scott.

6 6. Attached hereto as Exhibit E are true and correct copies of transcript pages from
7 the Deposition of Mike McGrath.

8 7. Attached hereto as Exhibit F are true and correct copies of transcript pages from
9 the Deposition of Nick Cortezi.

10 8. Attached hereto as Exhibit G are true and correct copies of transcript pages from
11 the Deposition of Cythina Marty.

12 I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct. Executed this 5th day of September, 2008, in San Francisco,
14 California.

15
16 
17 Dena L. Narbaitz

Exhibit A

Glenn Hargrove

June 17, 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA.

CRUMP INSURANCE SERVICES, INC., * Case No. C-07-4636 MMC

Plaintiff,

vs.

MICHAEL P. MCGRATH, an
individual, ALL RISKS, LTD., a
corporation, and Does 1
through 50, inclusive,

Defendants.

**CERTIFIED
COPY**

VIDEO DEPOSITION OF GLENN HARGROVE

ANSWERS AND DEPOSITION OF GLENN HARGROVE, produced as
a witness at the instance of the Defendants Michael P.
McGrath and All Risks, Ltd., taken in the above-styled and
-numbered cause on the 17th day of June, 2008, A.D.,
beginning at 11:14 a.m., before Lisa Smith, a Certified
Shorthand Reporter in and for the State of Texas, in the
offices of LBJ Corridor, located at 3010 LBJ Freeway, Suite
1200, Dallas, Texas, in accordance with the Federal Rules
of Civil Procedure and the agreement hereinafter set forth.

00020

1 A. Yes.

2 Q. And likewise, from the time you became the CEO and
3 president of Crump, you also had responsibility for hiring
4 brokers?

5 A. Yes.

6 Q. Now, focussing your attention on the time period
7 when you worked as a broker at Crump, did you have a
8 particular line of insurance that you were responsible for
9 trying to make placements?

10 A. I did multiple lines, but the predominance of what
11 I did was casualty business.

12 Q. Okay. And as a broker, your client base is made
13 up of retailers or retail agents; is that correct?

14 A. As a wholesale broker, yes.

15 Q. Okay. And is it fair for me to use the term
16 retailers and retail agents synonymously?

17 A. That's -- that's fine, yeah.

18 Q. Okay. But that's correct from your understanding
19 of the wholesale insurance industry?

20 A. That's -- that's how I use it, yes.

21 Q. Okay. So I may use them interchangeably,
22 retailers or retail agents, but I just want to make sure
23 we're on the same page as to those terminology. Okay?

24 A. That's fine.

25 Q. All right. So as a wholesale broker, did you

00021 .

1 develop the network of individual retailers that you worked
2 with?

3 A. Yes.

4 Q. And to your knowledge, did those retailers work
5 with other wholesalers at times?

6 A. Yes.

7 Q. In other words, those retailers were not --

8 A. I'm sorry. Your signal broke up there so I didn't
9 -- I didn't hear the whole question.

10 Q. I know. Let me -- let me repeat that.

11 Those retailers that you worked with when you
12 were a broker were not exclusive to you; is that correct?

13 A. Correct.

14 Q. In other words, the retailers or the retail
15 agents, to your knowledge, also worked with other wholesale
16 brokers outside of Crump; is that correct?

17 A. They -- they could have. Some did, some didn't.

18 Q. And the names of individuals that are retailers,
19 how did you as a broker go about locating those names?

20 A. Various methods.

21 Q. Such as?

22 A. Everything from Yellow Pages to industry
23 publications to memberships and association groups, word of
24 mouth on the street, a number of different methods.

25 Q. Okay. Are you familiar with a document, an

00022

1 insurance directory called the Kershner Directory with a K?

2 A. Yes.

3 Q. Okay. And have you ever used the Kershner
4 Directory?

5 A. Yes.

6 Q. And is it fair to describe that as sort of a
7 Yellow Pages of the insurance retailer industry?

8 A. Yes.

9 Q. And that is a document that, to your
10 understanding, is -- that Kershner Directory is available
11 to any and all wholesale brokers?

12 A. To my knowledge, yes.

13 Q. So given what you've just described in terms of
14 the -- the names of the retailers, I presume that would
15 also include their contact information that was available
16 in these various sources?

17 A. Such as phone numbers, fax numbers, sure.

18 Q. Okay. How about e-mails?

19 A. I don't know if Kershner lists e-mail addresses or
20 not. I don't recall.

21 Q. So this information concerning the contact for the
22 retailers, is it fair to say that that's generally known in
23 the insurance industry?

24 A. Sure. There's sources to find it; yes.

25 Q. Now, to make sure that I -- I properly understand

00030

1 Q. Okay. So summing it up, is it fair to say that
2 you -- when you're trying to get to understand what the
3 needs are of this particular insured, that you can
4 essentially pick the brain or request that information
5 directly from a retailer; is that right?

6 A. Yes.

7 Q. And/or you can go on various Web sites, whether
8 they be the underlying insured or other Web sites, others
9 in the industry to try to obtain that information; is that
10 accurate?

11 A. Yes.

12 Q. Now, has it been your experience that individual
13 companies who are looking for insurance sometimes approach
14 more than one retailer to help them?

15 A. Sometimes, yes.

16 Q. Are you able to give me, Mr. Hargrove, a
17 percentage of times that you're aware that that occurs
18 generally in the industry?

19 A. It'd be a guess, but I'd say probably two-thirds
20 of the time on average.

21 Q. Okay. And I don't -- I certainly don't want you
22 to guess, but do you feel given your experience in this
23 industry that that's an educated approximation?

24 A. Sure.

25 Q. Okay. And is it likely that more than one

00031

1 wholesaler would be approached by a retailer if -- if it's
2 an account that needs coverage from an excess and a surplus
3 -- surplus line of -- a surplus line market?

4 A. From an individual retailer?

5 Q. In other words, has it been your experience that a
6 wholesaler or more than one wholesaler may be approached by
7 the retailer when the retailer is looking for excess and
8 surplus lines markets?

9 A. They may be; correct.

10 Q. Okay. Can you give me any percentage in terms of
11 how often that happens?

12 A. It would be a rough estimate, but probably a third
13 of the time.

14 Q. Okay. And you may have answered this before, but
15 let me make sure I have this. Has it been your experience
16 that retailers go to different wholesalers to get a bid on
17 a particular potential placement?

18 A. Some do.

19 Q. And are you able to give a percentage of time, at
20 least with the retailers that you worked with when you were
21 a broker, how often that happened and how often were you
22 kind of, to your knowledge, bidding against other
23 wholesalers?

24 A. In my personal experience as a broker, probably a
25 fourth of the time.

00032

1 Q. Okay. And it's within the retailer's prerogative
2 to decide which wholesale broker to use; correct?

3 A. Yes.

4 Q. And in fact, if they wanted to use you at Crump
5 versus another broker at, let's say, AmWINS, that would be
6 the retailer's choice; is that right?

7 A. The retailers and their client, the insured as
8 well.

9 Q. So the retailer could choose which or does choose
10 which broker to use?

11 A. Yes.

12 Q. Wholesale broker; is that correct?

13 A. Well, but when you use the term use, the client --
14 the insured always has the ultimate say-so because they're
15 the purchaser of the product. And if they -- they can and
16 have refused to use wholesalers in certain events as well.

17 Q. Okay. Good. Fair enough. But it's -- the
18 retailers are the ones that are making the decision at
19 least which wholesale brokers to request a placement from?

20 A. Correct.

21 Q. Is that correct?

22 So that -- is it fair to say that retailers
23 are not owned by a wholesale company?

24 MR. ASKANAS: Objection. The question is
25 vague and ambiguous.

00034

1 retailers that Crump owned in the period of 2007 that
2 you're aware of?

3 MR. ASKANAS: Objection; vague and ambiguous.

4 THE REPORTER: I'm sorry, sir. You're
5 trailing off. I can't --

6 MR. ASKANAS: Okay. The question is vague
7 and ambiguous, but the witness can answer the question.

8 A. Other than the ownership by Marsh and the
9 ownership of Sedgewick prior to that or any Marsh or
10 Sedgewick affiliates, no, I'm not aware of any connection
11 between -- legal connection, ownership connection between
12 Crump and any other retailer.

13 Q. (BY MS. RUTTER) And Crump is considered one of the
14 largest independent wholesaler insurance groups in the US;
15 is that correct?

16 A. Correct.

17 Q. And are you aware of a rating by an entity called
18 Business Magazine that placed Crump in its October 2007
19 edition as the largest wholesale insurance broker?

20 A. Business Insurance Magazine, yes.

21 MS. RUTTER: Okay. Now, there should be a
22 couple of exhibits that were previously sent to the office.
23 And if I can ask the court reporter to show Mr. Hargrove
24 Exhibit No. 2, just Exhibit No. 2. It should be a one-page
25 document, it's entitled Largest Wholesale Brokers Business

00128

1 A. Just providing a name and an address and advising
2 them that you've left and moved to another place, I don't
3 think, constitutes solicitation by itself.

4 Q. (BY MS. RUTTER) During Mr. McGrath's last year at
5 Crump, is it correct that he was named broker of the year?

6 A. Yes, for 2006.

7 Q. And do you know -- strike that.

8 At Crump, what -- what generally constitutes
9 somebody being selected as broker of the year? What is the
10 criteria?

11 A. Well, we looked at our top performing brokers and
12 we had a prereq rule sort of in the company that we did not
13 award broker of the year twice to somebody that had
14 previously won it. So we -- the executive committee
15 reviewed a list of the top brokers, excluding those that
16 had already won the award prior to, and we looked at their
17 overall production. We looked at the growth in their
18 business. We looked at retention ratios, a whole host of
19 -- team work, attitude, all sorts of attributes and made a
20 determination as to who we felt like was the -- the most
21 outstanding broker for the year.

22 Q. And is this -- was he broker of the year for
23 California or the whole country?

24 A. The whole country.

25 Q. Now, before Mr. McGrath announced that he was

00159

1 conversation with Counsel.

2 A. Outside of discussions with Counsel, no.

3 MS. RUTTER: Why don't we take a moment and
4 change the -- I think we need to change the tape.

5 THE VIDEOGRAPHER: We're going off the
6 record. The time is 4:19 p.m. This is the end of Tape No.
7 2.

8 (Break was taken from 4:19 p.m. to 4:22 p.m.)

9 THE VIDEOGRAPHER: We're back on the record.
10 The time is 4:22 p.m. This is the beginning of Tape No. 3.

11 Q. (BY MS. RUTTER) Mr. Hargrove, did you have any
12 discussions with Mr. Scott about a conversation that he had
13 with Mr. McGrath the next day, the business day after that
14 weekend call to let you know that he resigned?

15 A. I -- I don't recall.

16 Q. Did -- did Mr. Scott indicate to you that he had
17 asked Mr. McGrath to leave immediately?

18 A. I do remember him saying that to me, yes.

19 Q. Was that his decision or was it something that the
20 two of you talked about?

21 A. I -- I know that was what Peter wanted to do. I
22 don't know. I think we discussed it some and I agreed to
23 what Peter's decision was.

24 Q. Did he tell you why it was that he wanted
25 Mr. McGrath to leave immediately?

00166

1 counsel.

2 Q. Let me show you what has been previously marked as
3 Exhibit 2 to the deposition of Mike McGrath. Do you have
4 that in front of you? It's a two-page letter from Andrew
5 Forstenzer to Mike McGrath dated June 5th, 2007.

6 A. I have it.

7 Q. And there is a CC to Bill Finegan at Fulbright and
8 Jaworski -- Fulbright and Jaworski, Glenn Hargrove and
9 Peter Scott at Crump and then All Risks. Do you recognize
10 this letter, Mr. Hargrove?

11 A. Yes.

12 Q. And for the record, it's Bates-numbered C0034
13 through 35, and it was Exhibit 2 to Mr. McGrath's
14 deposition.

15 Mr. Hargrove, did you have any input into
16 this letter?

17 A. Not the wording or verbiage of it. I certainly
18 discussed it with the -- the fact that we would send a
19 letter with Mr. Forstenzer.

20 Q. And did you approve the sending of this letter?

21 A. I -- I didn't see the letter prior to it going
22 out. I instructed Andy to send a letter with discussions
23 of the basic content.

24 Q. Okay. If you look at the first full paragraph on
25 the second page, it starts with despite these prohibitions.

00167

1 If you could just read that paragraph first.

2 MR. ASKANAS: I'm sorry. The first full

3 paragraph?

4 MS. RUTTER: Page 2.

5 MR. ASKANAS: On the second page.

6 THE WITNESS: Read -- read the --

7 MR. ASKANAS: You don't need to read it

8 aloud.

9 MS. RUTTER: No. Just read it to your --

10 just read it to yourself, sir.

11 THE WITNESS: Okay.

12 MR. ASKANAS: Just read it to yourself,

13 please.

14 A. Okay.

15 Q. (BY MS. RUTTER) Okay. If you look at again that

16 first full paragraph on Page 2, the second sentence starts,

17 based upon recently received broker of record notification,

18 you are working for a competing business and you are

19 attempting to do business with customers and clients with

20 whom you did business while at Crump for purposes of

21 upcoming July renewals and otherwise.

22 Other than these broker of record letters

23 that may have come in up into this time, are you aware of

24 any information to show that Mr. McGrath was, quote,

25 attempting to do business with customers and clients?

00168

1 MR. ASKANAS: Other than the discussions with

2 Counsel. Other than the discussions you had with Counsel.

3 A. Outside of discussions with Counsel, no.

4 Q. (BY MS. RUTTER) Other than the broker of record

5 letters, were you personally aware, not -- not regarding

6 discussions with Counsel, but were you personally aware of

7 any other information that showed whether or not

8 Mr. McGrath was, quote, attempting to do business with

9 customers and clients?

10 A. No. Other than the -- the testimony earlier as to

11 the conversation with the Woodruff Sawyer people.

12 Q. Well, that conversation hadn't taken place yet,

13 had it, sir?

14 A. Probably not at the time this letter was issued.

15 You're right.

16 Q. No. Because this letter was issued the day after

17 Mr. McGrath first left.

18 A. Right. So no. The answer would -- the answer

19 would be no. Yeah.

20 Q. And then it states, Crump also has reason to

21 believe that you have used confidential information and

22 trade secrets of the company in furtherance of your

23 competing business. Let me stop there.

24 Do you know what is being referred to here as

25 confidential information or trade secrets?

1 STATE OF TEXAS)

2 I, Lisa Smith, a Certified Shorthand Reporter in and
3 for the State of Texas, do hereby certify that, pursuant to
4 the agreement hereinbefore set forth, there came before me
5 on the 17th day of June, A.D., 2008, at 11:14 a.m., at the
6 offices of LBJ Corridor, located at 3010 LBJ Freeway, Suite
7 1200, in the City of Dallas, State of Texas, the following
8 named person, to wit: GLENN HARGROVE, who was by me duly
9 cautioned and sworn to testify the truth, the whole truth
10 and nothing but the truth, of his knowledge touching and
11 concerning the matters in controversy in this cause; and
12 that he was thereupon carefully examined upon his oath, and
13 his examination was reduced to writing under my
14 supervision; that the deposition is a true record of the
15 testimony given by the witness, same to be sworn to and
16 subscribed by said witness before any Notary Public,
17 pursuant to the agreement of the parties; and that the
18 amount of time used by each party at the deposition is as
19 follows:

20 Ms. Rutter - 04 hours, 29 minutes,

21 Mr. Askanas - 00 hours, 00 minutes.

22 I further certify that I am neither attorney or
23 counsel for, nor related to or employed by, any of the
24 parties to the action in which this deposition is taken,
25 and further that I am not a relative or employee of any

1 attorney or counsel employed by the parties hereto, or
2 financially interested in the action.

3 I further certify that, before completion of the
4 deposition, the Deponent _____, and/or the
5 Plaintiff/Defendant _____, did _____ did not _____ request
6 to review the transcript.

7 In witness whereof, I have hereunto set my hand and
8 affixed my seal this _____ day of _____, A.D.,
9 2008.

Lisa Smith

JUN 27 2008

LISA SMITH, CSR 7491
Expiration Date: 12/31/2009
Esquire Deposition Services
Firm Registration No. 286
1700 Pacific Avenue, Suite 4750
Dallas, Texas 75201
(214) 257-1436

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
CASE NO. C-07-4636 MMC

CRUMP INSURANCE SERVICES, INC.,

Plaintiff,

vs.

Deposition of:

JOHN JENNINGS

MICHAEL P. McGRATH, an individual,
ALL RISK, LTD., a corporation,
and Does 1 through 50, inclusive.

Defendants.

CERTIFIED
COPY

TRANSCRIPT of testimony as taken by and before
ALLYSON MICHELLE CACIOLI, a Shorthand Reporter and Notary
Public of the State of New Jersey, at the offices of HOBART
WEST, 25A Vreeland Road, Florham Park, New Jersey 07932, on
Friday, June 13, 2008, commencing at 1:00 p.m. in the
afternoon.

ESQUIRE COURT REPORTING
90 Woodbridge Center Drive, Suite 340
Woodbridge, New Jersey 07095

(732) 283 - 1060 Job# 66367

00012

1 Tri-City in approximately 1993?

2 A. Yes, that's accurate.

3 Q. And you were a manager/broker in the New
4 York City office; is that correct?

5 A. I started as a broker, and became the head
6 of the Tri-City New York office in, I want to
7 say, around the end of probably 1997.

8 Q. And then you stayed in that position until
9 you became president at Tri-City?

10 A. Correct.

11 Q. Do you recall when you became president of
12 Tri-City?

13 A. Some time in 2004.

14 Q. When you were a broker, at Tri-City, did
15 you have a particular line of insurance that you
16 were responsible for?

17 A. I would have been considered a casualty
18 broker.

19 Q. Is it accurate that as a broker, a
20 casualty broker in your case, that your clients
21 were made up of retailers?

22 A. Correct.

23 Q. And tri-City is also in the wholesale
24 broker industry, correct?

25 A. It is.

00013

1 Q. Over the years, I presume you developed a
2 network of individual retailers that you worked
3 with?

4 A. I did.

5 Q. And to your knowledge, those retailers
6 would also work with other wholesalers at times;
7 is that correct?

8 A. Correct.

9 Q. So in other words, those retailers were
10 not exclusive to you, correct?

11 A. Correct.

12 Q. The names and contact information for
13 those retailers is publicly available; is that
14 accurate?

15 A. In most circumstances, I would think they
16 are.

17 Q. In other words, you could go on the
18 company web sites and identify a particular
19 retailer, correct?

20 A. Not in all circumstance.

21 Q. Well, are you aware of the Kirschner
22 Directory?

23 A. I am not.

24 Q. Are you aware of any book or so-called --
25 I refer to it as sort of the yellow pages of your

00015

1 answer the question.

2 Q. And that was my next phrase, unless he
3 instructs you not to answer, you can go ahead and
4 answer the question, okay?

5 A. Okay.

6 Q. Back to the information concerning who
7 these retailers are, is something that is
8 generally known in the wholesale industry,
9 correct?

10 MR. ASKANAS: Same objection; improper,
11 vague.

12 A. I mean it's available if you do your
13 homework and seek out that information.

14 Q. Right, so it's not confidential to a
15 particular wholesaler?

16 MR. ASKANAS: Objection, that calls for a
17 legal conclusion and misstates his testimony.
18 It's also vague and ambiguous as to time and
19 scope. You can answer.

20 A. Yeah, I don't know if it's what you would
21 consider -- I don't know what would be
22 proprietary to an individual wholesaler. The
23 information isn't domiciled on the wholesalers, I
24 mean, they have to go find the information.

25 Q. Okay.

00016

1 A. Anybody who does the homework, I guess,
2 could find out who works where, if they decided
3 to put the time in.

4 Q. Is it fair to say that, the primary role
5 of a broker is to work with the retailers to
6 obtain placements on various types of insurance
7 for the retailer's clients, is that an accurate
8 description of what a broker's job is?

9 A. That's accurate.

10 Q. I know I'm being general, but my
11 understanding is -- and please correct me if I'm
12 wrong -- that as a broker, you work directly with
13 various retailers to try and place lines of
14 insurance, correct?

15 A. As a wholesale broker, that's exactly what
16 you do, correct.

17 Q. And to do your job as a broker, in your
18 experience, what information do you need to have
19 in order to make that placement?

20 A. Name of insured, addresses, descriptions
21 of the business, loss information, potentially
22 financial information.

23 Q. And the information that you just listed,
24 is that information that the retailers provide
25 you as the broker?

00017

1 A. Yes.

2 Q. Do companies who are looking for
3 insurance, in your experience, sometimes approach
4 more than one retail agent?

5 A. On occasion, yes.

6 Q. Can you give me any estimate or percentage
7 of time, in your experience, that you've seen
8 this occur?

9 A. Well, it happens, I mean, it would be just
10 a wild guess at a number. So I -- and I haven't
11 been --

12 MR. ASKANAS: We don't want you to guess
13 or speculate.

14 A. I have seen more than one retailer working
15 on more than one account before.

16 Q. Well, and the retailer is, in your
17 experience, the retailer is also working with
18 other wholesale brokers in order to get various
19 quotes, correct?

20 A. Sometimes.

21 Q. Is it likely that more than one wholesaler
22 would be approached if the account needs
23 coverage, for example, in an excess and surplus
24 line market?

25 MR. ASKANAS: I'm just going to object;

00018

1 vague, ambiguous, and calls improper

2 hypothetical.

3 A. It could happen.

4 Q. In your experience, have you seen that

5 happen?

6 A. On occasion I've seen that happen.

7 Q. And it's within the retailer's prerogative

8 to decide which broker to go and receive

9 information concerning a placement?

10 A. It is.

11 Q. Now Tri-City, as well as Crump, is part

12 of, I guess, what you can refer to as the

13 wholesale brokerage industry; is that fair?

14 A. That's fair.

15 Q. And this is -- at least in the United

16 States -- is a relatively small industry of

17 wholesalers?

18 MR. ASKANAS: Objection as to vague and

19 ambiguous as to "relatively small."

20 A. There are thousands of wholesalers in the

21 country, so I don't know if you would consider it

22 small.

23 Q. Well, Crump is considered one of the

24 largest, independent national wholesaler

25 insurance groups in the U.S., correct?

CERTIFICATE

I HEREBY SWEAR that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

It was requested before completion of the deposition that the witness, JOHN JENNINGS, have the opportunity to read and sign the deposition transcript.

JUN 26 2008

Allyson Michelle Cacioli

Allyson Michelle Cacioli
Court Reporter
Notary Public

(The foregoing certification of the transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the reporter.)

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

--oOo--

**CERTIFIED
TRANSCRIPT**

CRUMP INSURANCE SERVICES, INC.,)

Plaintiff,)

vs.)

No. C-07-4636 MMC

MICHAEL P. MCGRATH, an)
individual, ALL RISKS, LTD., a)
corporation, and Does 1)
through 50, inclusive,)

Defendants.)

DEPOSITION OF RICK MCDONOUGH

DATE: June 20, 2008

TIME: 12:59 p.m.

LOCATION: Curiale Dellaverson Hirschfeld & Kraemer
727 Sansome Street
San Francisco, CA

REPORTED BY: Kenneth T. Brill

Registered Professional Reporter

Certified Shorthand Reporter No. 12797

Page 1 - 78

00026

1 Q. -- S-W-E-T-T?

2 A. Yeah, I think so.

3 Q. When you were -- well, strike that.

4 Do you consider yourself an officer of Crump
5 corporation in terms of its management structure?

6 A. No.

7 MR. ASKANAS: Objection to the extent it calls
8 for a legal conclusion.

9 BY MS. RUTTER:

10 Q. Do you consider Mr. Scott an officer of the
11 corporation in terms of its management structure?

12 MR. ASKANAS: Same objection. Improper
13 foundation.

14 BY MS. RUTTER:

15 Q. You can go ahead and answer.

16 MR. ASKANAS: You can answer unless I say
17 don't answer the question.

18 THE WITNESS: Got you.

19 MR. ASKANAS: I'm objecting.

20 THE WITNESS: Rephrase the question, and then
21 I'll answer.

22 BY MS. RUTTER:

23 Q. Let me preface it, that's another --

24 MR. ASKANAS: Admonition.

25 BY MS. RUTTER:

00027

1 Q. -- admonition, thank you. Sometimes it gets
2 confusing for witnesses, if I ask a question, your
3 counsel may object to those question, and those
4 objections are noted for the record.

5 So unless and until he would instruct you not
6 to answer, those are sort of magic words, you can go
7 ahead and answer the question. So having said that, let
8 me rephrase the question.

9 Do you believe that Mr. Scott is an officer of
10 the corporation of Crump in terms of its management
11 structure?

12 A. I do not know.

13 Q. But you yourself as executive vice president
14 do not consider yourself an officer of the crump
15 corporation in terms of management?

16 A. I --

17 MR. ASKANAS: Objection, calls for legal
18 conclusion. You can answer.

19 THE WITNESS: I do not consider myself what
20 you said.

21 BY MS. RUTTER:

22 Q. An officer?

23 A. An officer.

24 Q. Okay. Now, in terms of your role as a broker,
25 is it fair for me to understand that the -- the

00028

1 customers, or your clients that you deal with are other
2 retailers; is that correct?

3 A. Correct.

4 Q. And over the years, from 2001 to present, you
5 have developed a network of retailers that you have
6 worked with, is that fair?

7 A. Yes.

8 Q. And to your knowledge, do those retailers also
9 work with other wholesalers outside of Crump at times?

10 A. Yes.

11 Q. In other words, those retailers are not
12 exclusively working with you at Crump; correct?

13 A. Correct.

14 Q. And the names and the contact information for
15 those retailers is something that is available through a
16 variety of sources; correct?

17 A. Correct.

18 Q. And can you give -- identify those sources for
19 me?

20 A. Google.

21 Q. Good old Google, okay.

22 A. Yellow pages. Yahoo.

23 Q. How about on the -- on the individual
24 retailers' websites, have you ever searched for
25 retailers that way?

00029

1 A. Yes.

2 Q. Okay. What about calling 411?

3 A. Yes.

4 Q. What about the Kirschner Directory, have you
5 ever heard of that?

6 A. Yes.

7 Q. Have you ever used the Kirschner Directory?

8 A. No.

9 Q. Let me see if -- I'm going to show you -- I'm
10 going to show you an actual Kirschner Directory book,
11 and then I have -- let me go ahead and mark this as an
12 exhibit, since I'm referring to it. Exhibit 3.

13 - - -

14 (Whereupon the document was marked,
15 for identification purposes, as
16 Defendant's Exhibit Number Three.)

17 - - -

18 BY MS. RUTTER:

19 Q. And, Mr. McDonough, this is just a two-page --
20 I believe two-page document. It's a photocopy of the
21 cover of the red book Kirschner, as well as the table of
22 contents of Kirschner's book.

23 Have you ever seen this book before?

24 A. Yes.

25 Q. All right. And the book -- the actual book

00030

1 that your counsel is now flipping through, but that you
2 looked at, is a red covered book, approximately what,
3 maybe an inch?

4 MR. ASKANAS: Three by five.

5 BY MS. RUTTER:

6 Q. Three by five, but about an inch thick. Have
7 you ever utilized that book in your services as a
8 wholesale broker?

9 A. Yes.

10 Q. And to your knowledge, did Mr. McGrath utilize
11 that book?

12 A. I do not know.

13 Q. Okay. And if I can just direct your
14 attention, if you'd look at the actual book, just to
15 pages 241 to, I think, 471, so 241 to 471, I just want
16 to know generally what that section represents.

17 A. It's --

18 MR. ASKANAS: Well, I think what she means
19 generally.

20 THE WITNESS: It's a listing.

21 MR. ASKANAS: It says agents and brokers in
22 Northern California. So -- what the last page you
23 mentioned?

24 MS. RUTTER: I think it -- to 471, I think
25 that's that whole section.

00031

1 MR. ASKANAS: Looks like agents and brokers.

2 BY MS. RUTTER:

3 Q. Okay. Take what you need in terms of looking
4 at just the contacts that are in there, and I want to
5 ask you, are there -- does that section identify
6 retailers?

7 A. Yes.

8 Q. And that provides contact information for
9 various retailers by geographic area, is that your
10 understanding?

11 MR. ASKANAS: I just want to object, the
12 document speaks for itself.

13 THE WITNESS: Rephrase your question.

14 BY MS. RUTTER:

15 Q. That that section refers to various retailers
16 by geographic area?

17 A. Yes.

18 Q. And is it fair to say that your primary role
19 as a broker is to work with retailers in order to do
20 placements for various types of insurance for the
21 retailers clients?

22 A. Correct.

23 Q. And to do your job, what information do you as
24 a broker need to have in order to attempt that
25 placement?

00032

1 A. We need to have a submission from the retail
2 broker.

3 Q. And is that in writing, Mr. McDonough?

4 A. Yes.

5 Q. And what information does the retailer provide
6 you in that submission?

7 A. An application. Loss information, financials.

8 Q. Does the submission also provide you the
9 expiration date of the insured's policy?

10 A. Not necessarily.

11 Q. Do you need an expiration date in order to do
12 your job to make a placement?

13 A. No.

14 Q. What else is provided by the retailer in that
15 submission, other than what you've already told me?

16 A. Website information.

17 Q. Is there information provided about the
18 underlying insured?

19 A. Underlying insured?

20 Q. In other words, the actual company or entity
21 that's being insured, that's the client of the retailer;
22 correct?

23 A. Correct.

24 Q. All right. So is information about who the
25 insured is, is that usually provided in a submission?

00033

1 A. Correct.

2 Q. All right. In any of the risks that the

3 insured is looking to have insured?

4 A. Correct.

5 Q. Any other information in that submission

6 provided by the retailer to you?

7 A. Information that's on the application.

8 Q. Such as what?

9 A. Effective date. Mailing address.

10 Q. And is there any other information that you

11 need in order for you to do your job and go out and find

12 a placement?

13 A. Once I have a complete submission, that's all

14 I need.

15 Q. Okay. And all that information, again, it

16 comes from the retailer; correct?

17 A. No.

18 Q. Oh, I'm sorry, I thought I understood you to

19 say that this was information that was provided on a

20 submission?

21 A. My -- to clarify the website, I may go to

22 their website and glean additional information to put my

23 submission together.

24 Q. Sure. Okay. Setting aside that, all the

25 information you need is provided on that submission by

00034

1 the retailer?

2 A. Correct. Correct.

3 Q. Has it been your experience that at times

4 retailers will send these submissions out to various

5 wholesale brokers?

6 A. Yes.

7 Q. In other words, trying to compete and get the

8 best deal?

9 A. Yes.

10 Q. Can you give me any estimate in terms of what

11 percentage of time that occurs?

12 MR. ASKANAS: Don't guess or speculate. If

13 you have an estimate, you can give it.

14 THE WITNESS: That would be a -- I don't know.

15 BY MS. RUTTER:

16 Q. Okay.

17 A. I have not been a retail broker, I do not know

18 what would be a fair assumption.

19 Q. I appreciate that. Are there certain -- in

20 your experience, are there certain retailers that tend

21 to bid wholesale brokers against each other?

22 A. Yes.

23 Q. And which retailers would those be?

24 A. Which -- rephrase the question.

25 Q. Sure. The question was are there certain

00050

1 that question again, so we make sure we have a -- we had
2 a lot of corrects going back and forth.

3 Mr. Court reporter, could you read back my
4 original question, please.

5 - - -

6 (The court reporter read back as
7 follows:

8 "QUESTION: At any point in time,

9 did you have any discussion with Mr.

10 McGrath about any employee moving to All

11 Risks?")

12 - - -

13 THE WITNESS: No, I did not have any

14 discussion with Mr. McGrath regarding an employee moving

15 to All Risks.

16 BY MS. RUTTER:

17 Q. Thank you.

18 Now, after Mr. McGrath left, let's say in the
19 couple of weeks, two, three weeks after Mr. McGrath left
20 Crump, are you aware of whether Peter Scott engaged in
21 any special efforts to reach out to any of the retailers
22 that Mike had worked with?

23 MR. ASKANAS: Objection to the term "special
24 efforts" as vague and ambiguous. Go ahead.

25 THE WITNESS: I need you to clarify what you

00069

1 forwarded this indication or quote to his home e-mail
2 address?

3 A. I do not know.

4 Q. Do you know where Mr. McGrath was on or around
5 Thursday, May 31st, 2007?

6 A. I do not know.

7 Q. Do you recall Mr. McGrath taking a vacation
8 for his wife's 40th birthday on or around this time?

9 A. I don't recall that it was around this time,
10 but I do recall that there was a vacation.

11 Q. And they -- a group went to Hawaii for the
12 vacation; correct?

13 A. Correct.

14 Q. Okay. Do you recall whether Mr. McGrath ever
15 told you that -- that he was trying to continue to
16 service some outstanding clients during that week that
17 he was on vacation?

18 A. I -- there was no discussion about it.

19 Q. Okay. Are you aware of whether Crump has ever
20 filed any other lawsuit against any broker who has left
21 to go and work for a competitor?

22 A. No.

23 Q. Are you aware of why Crump decided to proceed
24 in this lawsuit against Mr. McGrath?

25 A. I do not know the motivation behind it.

00070

1 Q. He was broker of the year for Crump the year
2 before he left; correct?

3 A. He was the broker of -- yes, for the year
4 preceding that period, yes.

5 Q. But he was named broker of the year in 2007?

6 A. The actual ceremony was 2007; correct.

7 Q. And that's not just for the San Francisco
8 office, that's for the entire Crump --

9 A. Correct.

10 Q. -- organization; is that correct?

11 A. Yes.

12 Q. Do you have any opinion as to whether or not
13 Crump appeared to be embarrassed that Mike as their top
14 broker of the year was leaving to go and work for a
15 competitor?

16 MR. ASKANAS: Objection to the extent that
17 opinion testimony is irrelevant.

18 BY MS. RUTTER:

19 Q. Go ahead, you can answer.

20 A. I do not have the -- rephrase the question so
21 I answer it properly.

22 Q. Sure. Let me actually ask a different
23 question, same genre. Let me ask a different question.

24 You've been working at this company for
25 approximately eight years; right; is that correct?

00074

1 THE WITNESS: His actual work at All Risks, I
2 don't know anything about his work at All Risks.

3 BY MS. RUTTER:

4 Q. So you don't -- you're not aware of what
5 placements he has made while at All Risks?

6 A. I am not aware of what business he has bound.

7 Q. Okay. And you're not aware of what retailers
8 he has worked with at All Risks during the last year?

9 A. I am aware of some.

10 Q. Okay. And do you see -- or do you have any
11 personal knowledge as to whether or not Mr. McGrath
12 inappropriately solicited any business?

13 MR. ASKANAS: Objection to the extent it calls
14 for a legal conclusion.

15 BY MS. RUTTER:

16 Q. And I had an ending to that question, so let
17 me restate it.

18 Do you have any personal knowledge as to
19 whether or not Mr. McGrath inappropriately solicited any
20 business while working at All Risks?

21 MR. ASKANAS: Same objection.

22 THE WITNESS: Rephrase the question again,
23 please. Sorry.

24 BY MS. RUTTER:

25 Q. Do you want it reread?

00075

1 A. Just reread.

2 Q. Okay. If you could do that, sir.

3 (Read back).

4 MR. ASKANAS: Same objection.

5 THE WITNESS: Yes.

6 BY MS. RUTTER:

7 Q. Okay. And what personal knowledge do you
8 have?

9 A. We received broker of record letters
10 appointing All Risks on business that he had written.

11 Q. Okay. What was unusual about that?

12 A. The -- we deal with the same specific
13 retailer, and I do a portion of one account, and he did
14 the other portion.

15 Q. Okay.

16 A. And that retailer informed me that Mike would
17 be handling that account going forward -- the property
18 side.

19 Q. And that is the retailers' choice to decide
20 which broker they want to --

21 A. Correct.

22 Q. Let me just finish.

23 A. Not finished, sorry.

24 Q. That is the retailer's decision to decide
25 which broker they want to have place their business;

00076

1 correct?

2 A. Correct.

3 Q. So, other than the fact that there were some

4 change in broker letters, changing from Crump to All

5 Risks, do you have any personal knowledge as to whether

6 or not Mike McGrath inappropriately solicited any such

7 business?

8 A. I do not.

9 Q. Do you have any personal knowledge as to

10 whether Mike McGrath used any Crump documents to obtain

11 any such business?

12 A. I do not have personal knowledge.

13 Q. Okay. Do you have any personal knowledge as

14 to whether or not Mike McGrath used any information from

15 Crump in order to obtain any business while at All

16 Risks?

17 A. I -- I do not.

18 Q. Okay.

19 MS. RUTTER: All right. Thank you. I have

20 nothing further. I thank you again for your time.

21 (Whereupon, the deposition was

22 adjourned at 2:27 p.m.)

23 --oOo--

24

25

CERTIFICATE OF REPORTER

I, KENNETH T. BRILL, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties hereto.

DATED: July 8, 2008.

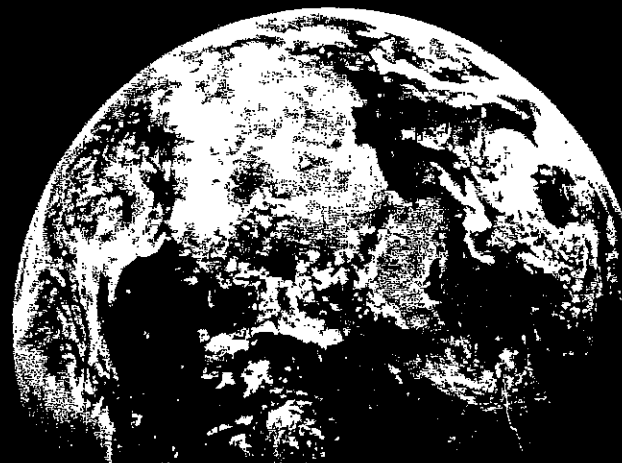
A handwritten signature in cursive script, reading "Kenneth T. Brill", written over a horizontal line.

KENNETH T. BRILL, CSR No. 12797

McDONOUGH DEPOSITION EXHIBIT 3

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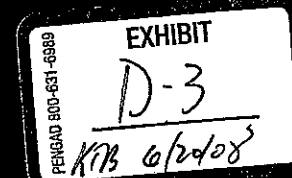
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Exhibit D

DEPOSITION OF PETER QUINLAN SCOTT

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 ---oOo---

4
5 CRUMP INSURANCE SERVICES, INC.,

6 Plaintiff,

7 vs.

No. C-07-4636 MMC

8 MICHAEL P. McGRATH, an individual,
9 ALL RISKS, LTD., a corporation,
and Does 1 through 50, inclusive,

10 Defendants.
11
12
13

14 Deposition of

15 PETER QUINLAN SCOTT

16 Friday, April 4, 2008
17
18
19
20
21
22
23

24 REPORTED BY: JEANNETTE SAMOULIDES, CSR NO. 5254
25

00017

1 were deposed in similar to this, the allegations in
2 this case? In other words, a claim that an employee
3 had violated some trade secret or taken confidential
4 information?

5 A. No.

6 Q. Have you ever been involved either --
7 strike that.

8 Do you understand the general nature of
9 the allegations in this case?

10 A. Yes.

11 Q. Okay. Have you ever been involved in any
12 similar-type case, either on the receiving end of a
13 claim or initiating a claim involving trade secrets
14 or confidential/proprietary information?

15 A. No.

16 Q. Now, you're currently employed by Crump;
17 is that correct?

18 A. Yes.

19 Q. All right. And what is your current
20 position?

21 A. I'm manager of the San Francisco office
22 and casualty broker.

23 Q. I'm sorry, casualty program?

24 A. Broker.

25 Q. Oh, broker.

00020

1 A. Majority of the time.

2 Q. Was Mr. Hahn your supervisor when you left
3 Tri-City?

4 A. He was president of the company. I
5 believe that -- let me think about this. I believe
6 Ed Ulshafer was my supervisor at the time that I
7 left.

8 Q. And what was Mr. Ulshafer's position?

9 A. He was a partner in the firm.

10 Q. Were both these gentlemen located in
11 San Francisco?

12 A. Yes.

13 Q. Was it -- is it fair to say that the
14 business at Tri-City, that you were in the insurance
15 wholesale brokerage business? Is that the general
16 description of the business?

17 A. Yes.

18 Q. Okay. So you would then go out and --
19 well, strike that.

20 Who were your clients, and I don't need
21 specific names at this point, but describe the
22 clients that you were serving when you were working
23 at Tri-City?

24 A. Retail insurance brokers.

25 Q. Okay. And are those also known as retail

00021

1 agents?

2 A. Yes.

3 Q. Or retailers?

4 A. Yes.

5 Q. Okay. So if I use that terminology,

6 whether it's retailers or retail agents, that's the

7 same as retail insurance brokers?

8 A. I would say so, yes.

9 Q. Okay. So we're all on the same page if I

10 use that terminology "retailers"?

11 A. Yes.

12 Q. Just to short change things -- not short

13 change, but short circuit I should say.

14 So you would get information from a

15 retailer in terms of a particular insured needing

16 a -- in your case, a casualty insurance plan,

17 correct?

18 A. Yes.

19 Q. Okay. And it would be your

20 responsibility, then, to go out and try and find the

21 most competitive line of insurance; is that fair?

22 MR. PITHA: I just object, vague as to

23 "competitive."

24 MS. RUTTER: Q. Well, you're trying to

25 find the best policy that you could take back to the

00024

1 Q. So how long have you been in the casualty
2 broker industry?

3 A. 1985.

4 Q. And the first position was with whom?

5 A. Alexander Howden.

6 Q. Okay. Give me a little bit of background,
7 if you would, in terms of your educational --

8 A. I went to Dawson College in Montreal,
9 Canada, and from there I went to work in London at
10 Alexander Howden in a training program.

11 Q. Okay.

12 A. And then started in the insurance business
13 with them, with Alexander Howden.

14 Q. In 1985?

15 A. Yes.

16 Q. Okay. And when did you graduate from
17 Dawson College?

18 A. I didn't. I went into the insurance
19 business.

20 Q. Okay. Do you have any licenses or any
21 other degrees or certifications?

22 A. I have insurance licenses.

23 Q. Okay. So take me through how it would
24 work -- and again, I'm focusing at this point on
25 Tri-City -- in terms of a retailer coming to you

00025

1 requesting that you submit a proposal? How does that
2 work?

3 A. The retailer would phone you up and say
4 that they need assistance with a certain coverage,
5 and you let them know if you could help them or not.

6 Q. Okay. So what type of information would
7 they gave you?

8 A. A submission.

9 Q. Okay. And is this in writing?

10 A. Yes.

11 Q. Okay. And it has things like what?

12 A. Application; loss information; brochure,
13 if applicable; financials; underlying program if it's
14 an umbrella; general information about an insured.

15 Q. Does it have information concerning the
16 amount that they're willing to pay in terms of a
17 premium?

18 A. In some cases.

19 Q. Does it have the policy expiration date of
20 their current policy?

21 A. The accord application has the policy
22 period on it.

23 Q. The what accord?

24 A. Application has the policy period on it.

25 Q. And that is an application that was given

00026

1 to you by a retailer?

2 A. Yes.

3 Q. So you get all your information from this
4 retailer; is that fair?

5 A. From a retailer, yes.

6 Q. Okay. And then you have direct contact
7 with potential carriers that you work with?

8 A. Yes.

9 Q. Okay. And then do you take that
10 information and verbally communicate that to
11 potential carriers or do you do it in writing?

12 A. In writing.

13 Q. Okay. And what is that process called, if
14 anything?

15 A. Submitting a submission to an insurance
16 carrier.

17 Q. Okay. And then you get a response back
18 from the insurance carrier?

19 A. Yes.

20 Q. Okay. And then what do you do with that
21 information?

22 A. You give the information to the retail
23 broker.

24 Q. And then what occurs next in this process?

25 A. Of obtaining a quotation or -- what's your

00027

1 question, please?

2 Q. You get the information from the carrier
3 in response to submitting, essentially, a proposal or
4 a submission I think you referred to it?

5 A. From the carrier you submit whatever
6 information they give you back to the retail broker.

7 Q. Okay. And so you give that back to the
8 retail broker, and then does the retail broker make
9 the decision in terms of which policy or which
10 carrier to go with?

11 A. I believe they would discuss it with the
12 person buying the insurance and they'd make the
13 decision.

14 Q. Okay. And then are you eventually
15 notified by the retailer that, "Hey, we want to go
16 with this particular proposal"?

17 A. Yes.

18 Q. Okay. And, again, I'm just asking very
19 generally, are you potentially bidding against other
20 brokers?

21 In other words, does the retailer -- when
22 the retailer comes to you and says, "Peter, give me
23 submission on X, Y and Z," is the retailer also going
24 out to other brokers to see if they can get the best
25 deal?

00081

1 A. Yes.

2 Q. Okay. And then you've also identified
3 information about the insured, the nature of
4 placement, correct?

5 A. Yes.

6 Q. And any information received from the
7 retail brokers regarding that placement, correct?

8 A. Yes.

9 Q. Such things as the current insurance
10 carrier that the policy is currently with, correct?

11 A. And the submission, which would be the
12 information that the retailer gives you.

13 Q. Okay. Anything else?

14 A. Not that I can think of.

15 Q. Okay. Now, this information is -- that
16 you've identified here as confidential or proprietary
17 is all information that you're able to obtain from
18 the retail agent, correct?

19 A. Yes, or the insurance carrier.

20 Q. Okay. So this is not information that
21 only Crump maintains, correct?

22 A. Correct.

23 Q. So anyone in this industry that would have
24 access to the retail agent could obtain this
25 information you've identified here for me, correct?

00082

1 MR. PITHA: I'm just going to object as
2 vague.

3 THE WITNESS: Can you repeat the question,
4 please?

5 MS. RUTTER: Sure.

6 Q. Anyone that's in your industry that has
7 access to a retail broker could obtain this list of
8 information that you've identified, correct?

9 A. If they were willing to release it to
10 them, yes.

11 Q. If "they" meaning the retail broker was
12 willing to release it, correct?

13 A. Or the insurance carrier.

14 Q. Or the insurance carrier.

15 A. Right.

16 Q. In other words, you wouldn't need to go to
17 an employee at Crump to get this information,
18 correct?

19 A. Correct.

20 MS. RUTTER: All right. And let me show
21 you what we'll mark as Defendants' Exhibit 3.

22 (Defendants' Exhibit 3 marked for
23 identification.)

24 MS. RUTTER: Q. And what I've done,
25 Mr. Scott, is I'm showing you the actual Red

00083

1 Krischner Book, and what we've marked as Defendants'
2 Exhibit 3 is simply the cover of this book and the
3 one page table of contents, which you're free to look
4 at in terms of the original.

5 Let me just ask you, is this the sort of
6 Yellow Pages of the insurance industry that you were
7 referring to earlier, this Krischner book?

8 A. Yes.

9 Q. And is this something that is published on
10 an annual basis to your knowledge?

11 A. I don't know.

12 Q. Okay. If you look at the one that I have
13 here, and as I said we've got the cover page and
14 table of contents, Exhibit 3, it's dated, I believe,
15 April of 2002, and it's identified for Northern
16 California.

17 Does that refresh your recollection at all
18 whether or not this is something that's put out on an
19 annual --

20 A. I don't know when they publish it.

21 Q. Okay. And is this a document that you've
22 had occasion to refer to or use in your practice as a
23 wholesaler?

24 A. I may have used it. I don't currently use
25 it. As I said before, I usually dial 411 if I need

00136

1 All Risks?

2 A. I don't know offhand.

3 Q. Can you give me a ballpark?

4 A. No.

5 Q. Has that been compiled in any way?

6 A. I'm not sure if it's complete at this
7 time, but it can be.

8 Q. When I refer to "business," we're talking
9 about the commissions that would have been earned on
10 these accounts, correct?

11 A. Yes. Commission or fee.

12 Q. And do you know if these were all yearly
13 expiration policies, in other words, they expire
14 every year?

15 A. I would assume so unless it's a three-year
16 program.

17 Q. Are most of the policies annual policies?

18 A. Yes.

19 Q. Okay. And so after June of 2008 these
20 policies would have expired or will expire?

21 A. Some of them. Some might be longer.

22 Q. Okay. And once a policy expires, it's
23 fair game in terms of other wholesale brokers to go
24 after that business?

25 MR. PITHA: Object as to "fair game."

00137

1 THE WITNESS: What do you mean by that?

2 MS. RUTTER: Q. Well, if a policy

3 expires that Crump has placed, the retail broker then

4 can go to any other wholesale broker for the renewal

5 of that policy, right?

6 A. Yes, they can go to any wholesaler or

7 insurance carrier directly.

8 Q. Okay. So you're not claiming that

9 policies that will be expiring a year after

10 Mr. McGrath leaves or has left Crump are policies

11 that necessarily would have been -- would have

12 remained with Crump, correct?

13 A. I'm not sure. You'd have to ask our

14 attorney.

15 Q. Well, I don't get to depose your attorney

16 unfortunately.

17 A. I'm not sure what the time frame would be.

18 Q. Okay. Let's assume the policy was an

19 annual policy, and that policy, let's say, expires in

20 June of 2008.

21 That policy is up for renegotiation by the

22 retail broker with any wholesaler, correct?

23 A. Depends on direct market.

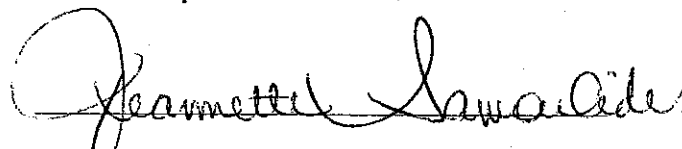
24 Q. Okay. And so as you sit here today, are

25 you on behalf of Crump claiming any damages for any

DEPOSITION OF PETER QUINLAN SCOTT

1 I, the undersigned, a Certified Shorthand
2 Reporter in the State of California, hereby certify
3 that the witness (if applicable) in the foregoing
4 deposition was by me duly sworn to testify to the
5 truth, the whole truth, and nothing but the truth in
6 the within-entitled cause; that said proceeding was
7 taken at the time and place therein stated; that the
8 testimony of said witness was reported by me, a
9 disinterested person, and was thereafter transcribed
10 under my direction into typewriting; that the
11 foregoing is a full, complete, and true record of the
12 said testimony; and that the witness (if applicable)
13 was informed of his/her opportunity to read and, if
14 necessary, correct said deposition and to subscribe
15 the same.

16 I further certify that I am not of counsel
17 or attorney for either or any of the parties in the
18 foregoing proceedings and caption named, or in any
19 way interested in the outcome of the cause named in
20 said caption.

Date: April 16, 2008

JEANNETTE SAMOULIDES, CSR #5254

DEPOSITION OF PETER QUINLAN SCOTT, VOLUME II

1 UNITED STATES DISTRICT COURT
2 IN THE NORTHERN DISTRICT OF CALIFORNIA

3 ---oOo---

4
5 CRUMP INSURANCE SERVICES, INC.,

6 Plaintiff,

7 vs.

No. C-07-4636 MMC

8 MICHAEL P. McGRATH, an individual;
9 ALL RISKS, LTD., a corporation,
and DOES 1 - 50 inclusive,

10 Defendants.
11 _____

12
13 Deposition of
14 PETER QUINLAN SCOTT
15 Thursday, June 19, 2008
16
17
18

19 Volume II
20 (Pages 205 - 308)
21
22
23

24 REPORTED BY: JEANNETTE SAMOULIDES, CSR NO. 5254
25

205

00232

1 A. I don't recall any specific occasions
2 discussing anything concerning Mr. McGrath with just
3 Glenn Hargrove. I believe that each time it was on a
4 conference call with our corporate counsel Andy
5 Forstenzer.

6 Q. Do you recall ever going to Mr. Hargrove
7 and stating that you had some concerns that
8 Mr. McGrath may be in violation of his agreement with
9 Crump, and Mr. Hargrove suggesting that you go to
10 Mr. Forstenzer about that?

11 A. That's potentially possible, yes.

12 Q. You just don't recall it?

13 A. Correct.

14 Q. Now, directing your attention to Cyndi
15 Marty.

16 Prior to her working for Crump, did you
17 know where she worked?

18 A. Yes.

19 Q. And where was that?

20 A. Marsh McLennan.

21 Q. Okay. And do you know how long she worked
22 at Marsh?

23 A. No.

24 Q. Do you know if it was a -- for a
25 significant period of time, in other words, over 10

00233

1 years?

2 A. I'd say five to ten years potentially.

3 Q. Did you interview her when she -- when she
4 was being hired by Crump?

5 A. Mike McGrath interviewed her and then I
6 had a meeting with Mike and Cyndi.

7 Q. As part of the interview process?

8 A. Yes.

9 Q. And did you -- did you know generally,
10 either from that meeting or from another source, how
11 long she had been in the industry, in the insurance
12 industry?

13 A. I don't recall from the meeting, but I
14 know that Cyndi's been in the insurance business at
15 least 20 years.

16 Q. Okay. And did you know anything about her
17 reputation in the industry?

18 A. Yes.

19 Q. And how would you describe her reputation
20 in the industry?

21 A. She has a good reputation.

22 Q. And is she well-known in the industry for
23 being a good insurance professional?

24 MR. ASKANAS: Objection. Calls for
25 speculation; no foundation.

00267

1 MS. RUTTER: No, Counsel, I'm not going to
2 give you a second.

3 MR. ASKANAS: I don't want you to
4 regurgitate what you've already asked him. So --

5 MS. RUTTER: And I'm not going to take
6 time on the record for you to sit and read
7 Mr. Scott's deposition. If you wanted to do that,
8 you could have certainly done that before.

9 Q. Mr. Scott, what did Mr. McGrath do wrong
10 in terms of the change in these Broker of Record
11 letters?

12 MR. ASKANAS: Go ahead and answer.

13 The question's been asked and answered and
14 calls for a legal conclusion.

15 THE WITNESS: What did he do wrong? Well,
16 he had a noncompetition of business from Crump for a
17 year, so he should not have solicited or worked on
18 that business for a period of a year.

19 MS. RUTTER: Q. So is it --

20 A. Second --

21 Q. I'm sorry, go ahead.

22 A. Secondly, his agreement said that he was
23 not to take any employees. What else did he do
24 wrong?

25 Q. Well, let's stick with the -- whether or

00268

1 not you thought it was wrong for him to take -- to
2 continue to work on retailer -- with retailers that
3 he had worked with before.

4 The fact that these Broker of Record
5 letters were received, you're making an assumption
6 that Mr. McGrath solicited that change from Crump to
7 All Risks?

8 MR. ASKANAS: I don't understand the
9 question.

10 Could you repeat it, Ms. Court Reporter.

11 THE REPORTER: "Well, let's stick with
12 the -- whether or not you thought it was
13 wrong for him to take -- to continue to
14 work on retailer -- with retailers that he
15 had worked with before.

16 The fact that these Broker
17 of Record letters were received, you're
18 making an assumption that Mr. McGrath
19 solicited that change from Crump to
20 All Risks?"

21 THE WITNESS: There was a change from
22 Crump to All Risks based on those letters, yes.

23 MS. RUTTER: Q. Okay. And I understand
24 that.

25 But you're making an assumption that

00269

1 Mr. McGrath requested that the change be made,

2 correct?

3 A. I'm not making any assumptions, other than

4 we received the Broker of Record letters on those

5 policies.

6 Q. Okay. And so you don't know whether or

7 not the change was initiated by someone other than

8 Mr. McGrath, correct?

9 A. Correct.

10 Q. As a broker, a wholesale broker, it's

11 their job to go out and meet with retailers, correct?

12 A. One of them, yes.

13 Q. Okay. And one of their jobs is to try and

14 urge the retailer to work with that particular

15 wholesaler, correct?

16 A. Yes.

17 Q. So is it your testimony that any broker

18 who leaves Crump to go to another wholesale broker

19 can never go back to that prior retailer to encourage

20 them to work with them?

21 A. No.

22 Q. That's not your testimony?

23 A. No.

24 Q. Because that's not what you did when you

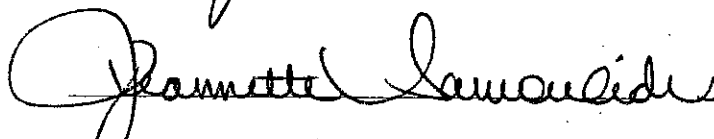
25 went from Tri-City to Crump, is it?

DEPOSITION OF PETER QUINLAN SCOTT, VOLUME II

1 I, the undersigned, a Certified Shorthand
2 Reporter in the State of California, hereby certify
3 that the witness (if applicable) in the foregoing
4 deposition was by me duly sworn to testify to the
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13 was informed of his/her opportunity to read and, if
14 necessary, correct said deposition and to subscribe
15 the same.

16 I further certify that I am not of counsel
17 or attorney for either or any of the parties in the
18 foregoing proceedings and caption named, or in any
19 way interested in the outcome of the cause named in
20 said caption.

21
22 Date: June 26, 2008

23
24 

25 JEANNETTE SAMOULIDES, CSR #5254